IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WA. No. 1184 of 2007

AGAINST THE JUDGEMENT IN WPC.15162/2006 Dated 12/12/2006
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APPELLANT: PETITIONERS 1,2 AND 5 IN WPC
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1. V.T.THOMAS, P.D.TEACHER,
GOVERNMENT VOCATIONAL HIGHER SECONDARY SCHOOL,
KANAKKARI, KOTTAYAM DISTRICT.

2. PREETHI.M.P., P.D.TEACHER,
GOVERNMENT UPPER PRIMARY SCHOOL,
COTTANAD, MEPPADI, WAYANAD DISTRICT.

3. PRAFITA.R., P.D.TEACHER,
GOVERNMENT JUNIOR BASIC SCHOOL,
PERUVEMBA, PALAKKAD DISTRICT.

BY ADV. SRI.M.S.UNNIKRISHNAN
SMT.S.KARTHIKA
SMT.K.P.GEETHA MANI
SRI.M.R.ANISON
SRI.T.R.RAJESH

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT
SECRETARIAT, TRIVANDRUM.

2. THE DIRECTOR OF HIGHER SECONDARY
EDUCATION, HOUSING BOARD BUILDINGS,
SANTHI NAGAR, TRIVANDRUM.

3. PRAKASHAN ILLATHAMKANDY,
HIGH SCHOOL ASSISTANT, GOVERNMENT HIGHER
SECONDARY SCHOOL, PALLIKKARA P.O.,
KASARGOD DISTRICT.

R1 BY GOVT PLEADER SRI BENNY GERVASIZ
BY ADV. SRI.GRASHIUS KURIAKOSE

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 29/05/2007, ALONG WITH WA NO. 1185 OF 2007 WA NO. 1190 OF 2007 THE COURT ON 04/06/2007 DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

W.A. Nos. 1184, 1185 and 1190 of 2007

Dated: 4th June, 2007.

JUDGMENT

Radhakrishnan, J.

These appeals are preferred against the common judgment in W.P.C. No 15162 of 2006 and connected cases.

2. Petitioners in W.P.C. Nos 15162 of 2006 and 14522 of 2006 are working as Primary Departmental Teachers in various government schools and petitioners in W.P.C. No 24369 of 2006 are stated to be qualified candidates eligible to be appointed as Higher Secondary School Teachers in Computer Science/Computer Application under the direct recruitment quota. Petitioners in all these cases are aspirants for the post of Higher Secondary School Teachers and Higher Secondary School Teachers (Junior) in Computer Science/Computer Application. The question raised is

whether UPSAs/LPSAs who possess the prescribed qualification under Rule 5 (1) should be preferred for appointment by transfer to the post of Higher Secondary School Teacher in Computer Science/Computer Application in the absence of High School Assistants who do not possess the qualification prescribed under item (i) of Rule 5 of the Special Rules. Learned single judge in paragraph 7 of the judgment has already quoted the qualification prescribed under the Special Rules for appointment to the post of Higher Secondary School Teacher (Computer Science). Rule 5 of the Special Rules states that no person shall be eligible for appointment to the category mentioned in column (2) in the table provided therein under methods specified in column (3) unless he possesses the qualification prescribed in the corresponding entry in column (4) thereof. Rule 3 states how appointments to various categories are to be made. Appointment to the post of Higher Secondary School Teacher is to be made by transfer from Higher Secondary School Teacher (Junior) in the subject concerned and in the absence of qualified hands under clause (i) vacancies shall be apportioned in the ratio of 1 : 3 between appointment by transfer and direct recruitment, and by transfer from High School Assistants

included in the General Education Subordinate Service who possess the requisite qualification in the subject concerned and in the absence of qualified persons under item (a) above, by transfer from qualified UPSAs/LPSAs included in the General Education Subordinate Service who possess the requisite qualification in the subject concerend.

3. Senior Counsel appearing for the appellants submitted that essential and requisite qualification is the qualification in item (i) in Rule 5 and in the absence of qualified hands among High School Assistants persons who possess that qualification from any UPSAs/LPSAs should be preferred. This contention was rejected by the learned single judge holding that the qualifications prescribed under Rule 5 for appointment by transfer to the post of Higher Secondary School Teacher are not only the qualifications prescribed in clause (i) but also the alternative qualifications mentioned therein. In the absence of qualified hands under clause (i) those HSAs who possess alternative qualifications prescribed under the rules are also eligible to be appointed by transfer as Higher Secondary School Teacher. There is nothing in the Rules to indicate that in the absence of HSAs with qualifications prescribed

under item (i) Rule 5 candidates from qualified UPSAs/LPSAs should be preferred. Qualifications prescribed under Rule 5 would show that they include the alternative qualifications also meaning thereby that if no Post-graduate in the subject concerned is available, a B.Tech graduate or Bachelor of Engineering in the subject can be considered. Similarly it is also provided that a Post-graduate in Statistics with P.G Diploma in Computer Application can become eligible for appointment in the absence of a Master's degree holder in Engineering or Technology in Computer Science. A Master's degree holder in Mathematics/Physics with P.G Diploma in Computer Application will be eligible for appointment in the absence of candidates with Master's degree in Computer Science or Computer Application. A reading of the rules does not lead to a different conclusion and to hold that candidates from among UPSAs/LPSAs are to be considered for appointment by transfer even if HSAs are available with alternative qualification will be a misreading of the rule.

4. Counsel for the appellants brought to our notice the judgment of a Division Bench of this court in W.A. No 2750 of 2000 to establish her contention. We are of the view, that judgment is not

applicable to the facts of this case since the same dealt with a different fact situation. In such circumstances, we find no reason to entertain these appeals and are dismissed in limine.

Sd/-
K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

04/06/2007
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